

EXHIBIT 3

PART I

Katherine Kinsella

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Cambridge, MA

June 16, 2006

Page 1

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 MDL Docket No. 01CV12257-PBS

4 - - - - - x

5 IN RE:

6

7 PHARMACEUTICAL INDUSTRY AVERAGE

8 WHOLESALE PRICE LITIGATION

9 - - - - - x

10 June 16, 2006

11 12:00 p.m.

12

13 DEPOSITION OF KATHERINE KINSELLA, held at Hagens
14 Berman Sobol Shapiro LLP, One Main Street, Cambridge,
15 Massachusetts.

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22 Reporter: Lisa A. Moreira, RMR/CRR

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1 A P P E A R A N C E S (Continued)

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1 I N D E X

2 WITNESS: PAGE

3 KATHERINE KINSELLA

4 (By Mr. Flynn) 006

5

6 E X H I B I T S

7 NO. DESCRIPTION PAGE

8 Exhibit Kinsella 001 Affidavit of Katherine
9 Kinsella 00910 Exhibit Kinsella 002 Various form of published
11 notice 01312 Exhibit Kinsella 003 AWP-KIN-00002 and AWP-KIN-
13 00003 01614 Exhibit Kinsella 004 Article, "Quantifying
15 Notice Results in Class
16 Actions - the Daubert/Kumho
17 Mandate" 03518 Exhibit Kinsella 005 AWP-KIN-00153 and AWP-KIN-
19 00154 05820 Exhibit Kinsella 006 Article, "Notification of
21 Settlement Administration" 075

22

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1	Exhibit Kinsella 007	Article, "The Plain Language	
2		Tool Kit for Class Action	
3		Notice"	095
4	Exhibit Kinsella 008	AWP-KIN-00001	147
5	Exhibit Kinsella 009	Better Homes & Gardens	
6		profile	194
7	Exhibit Kinsella 010	National Geographic profile	194
8	Exhibit Kinsella 011	AWP-KIN-00148	197
9	Exhibit Kinsella 012	AWP-KIN-00315 through AWP-	
10		KIN-00319	197
11	Exhibit Kinsella 013	AWP-KIN-00326 and AWP-KIN-	
12		00327	197

13

14 *Originals returned to Attorney Flynn

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1 actually start it this way.

2 Are you aware that my defendant,
3 AstraZeneca, has filed summary judgment papers with
4 the court setting forth its views as to why the
5 claims in this case should not go forward?

6 A. Yes, you told me that.

7 Q. Other than my telling you that?

8 A. I'm, yes, generally aware.

9 Q. But just to recap so we're on the same page,
10 you didn't take the positions that my client,
11 AstraZeneca, has espoused in those papers into
12 account in formulating the content of the notice,
13 correct?

14 A. I did not.

15 Q. Do you know who the Class 1 class
16 representatives are for my client, AstraZeneca, with
17 respect to the case that's scheduled to be tried
18 against my client, AstraZeneca, on September 25th?

19 A. I do not. That would not be information
20 that would have any bearing on my work.

21 Q. And why wouldn't it?

22 A. Because what I'm looking at is finding the

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1 best demographic target, the most accurate target to
2 develop a notice plan -- to develop a media plan
3 against. And the name of the person who's a class
4 representative has no bearing on that whatsoever.

5 Q. Is anything about the class representative,
6 the types of claims, when they were exposed to my
7 client's product, their geography, anything about
8 them in specific in your view important for the
9 class to know in deciding whether or not to opt out
10 or not?

11 A. I don't think that -- no, I don't believe it
12 would be important, nor have I, in the years that
13 I've been doing this that I can remember, come
14 across the name of a class representative in any
15 summary notice document. Sometimes it occasionally
16 could be in a long form notice, but it's not
17 something that is usually put in by myself or other
18 notice experts.

19 Q. Put aside the name of the class
20 representative. Do you think it's important for
21 potential members of the class to know under what
22 state consumer protection laws the class

1 representative's case will be tried?

2 A. I don't think they'd understand it, for the
3 most part. It could be included. I find it
4 oftentimes extremely dense and confusing to people
5 who aren't lawyers. I think that that information
6 can be gotten successfully in any other documents
7 that exist in the case, like the complaint, which is
8 oftentimes filed on the website, or it can be
9 obtained by writing or calling for it.

10 But I don't think that's really, in the
11 most part, material to people. They essentially
12 want to know, did I take this drug? Do I have --
13 would I possibly have a claim in this? And if it's
14 a settlement, filling out the claim form and putting
15 the pertinent information in that way.

16 Q. In this case the notice with respect to my
17 client, AstraZeneca, is a notice not of settlement;
18 is that right?

19 A. That's correct.

20 Q. And do you believe that the content of the
21 notice should inform the potential class members as
22 to both sides' -- both plaintiffs' and defendants'

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1 -- views off the claims and the defenses?

2 A. Yes.

3 Q. And it should do so in a neutral way,
4 correct?

5 A. Yes.

6 Q. And how can one determine the position of
7 the defendants if you're preparing the content of
8 the notice without reviewing the position of the
9 defendants in the case?

10 A. In the notices that I have drafted and have
11 been approved by courts, there usually is a sentence
12 or two or a paragraph about what the claims are.
13 That's subject to review and negotiation, I would
14 assume, between -- and mediation by the court, and
15 if you want that put in, I assume that you will
16 speak to the plaintiffs about that. I drafted it as
17 I normally draft all my long form notices.

18 Q. And you don't have -- as a professional
19 advising and giving opinions on these notices, you
20 do not have a problem with including a statement
21 that the defendants want in terms of their position
22 on the claims?

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1 A. If it is approved by the court, no.

2 Q. I talked about the class representatives for
3 Class 1 for my client, AstraZeneca. I take it,
4 based on your answers, you don't know what state
5 consumer protection laws govern their claims.

6 A. I do not know.

7 Q. Okay. We talked about the summary judgment
8 papers that my client, AstraZeneca, filed that you
9 haven't read. How about more broadly the summary
10 judgment papers of defendants on joint issues in the
11 case? Have you read those?

12 A. No, I have not.

13 Q. Ms. Kinsella, would you agree with me that
14 actual notice should be sent to all class members
15 whose names and addresses can be obtained through a
16 reasonable effort?

17 A. Yes.

18 MR. FLYNN: Can we mark this.

19 (Exhibit Kinsella 004 marked for
20 identification)

21 Q. Now, as we're getting that marked, the notice
22 plan that you put forth in this case does not --

1 MR. NOTARGIACOMO: Off the record.

2 (Pause)

3 Q. The notice plan that you put forth in this
4 case does not call for actual notice in the first
5 instance to members of Class 1; is that right?

6 A. That's correct.

7 Q. You do propose sending actual notice, what
8 you call a long form notice, to members of Class 1
9 if they take some action to ask for it after seeing
10 the published notice; is that right?

11 A. Correct.

12 Q. But in the first instance there's no mailing
13 to potential members of Class 1, right?

14 A. That's correct.

15 Q. Could you identify what's in front of you,
16 Exhibit Kinsella 004?

17 A. It's an article that I wrote in 2001 in the
18 Class Action Litigation Report, and it was -- it's
19 entitled "Quantifying Notice Results in Class
20 Actions - the Daubert/Kumho Mandate."

21 Q. If you look at the first paragraph starting
22 with the second sentence, you write, "The Federal

1 Rules of Civil Procedure require 'the best notice
2 under the circumstances, including individual notice
3 to all members who can be identified through
4 reasonable effort,'" and you cite to the Federal
5 Rules. Do you see that?

6 A. Yes, I do.

7 Q. And that is just saying what you just
8 testified to, that in your view you should send
9 actual notice to people if you can obtain their
10 names and addresses through a reasonable effort.

11 A. Correct.

12 Q. Okay. The next sentence goes on to refer to
13 the Eisen case, and you write that that case "makes
14 clear that this requirement is quite unforgiving, as
15 '[t]here is nothing in Rule 23 to suggest that the
16 notice requirements can be tailored to fit the
17 pocketbooks of particular plaintiffs.'" Do you see
18 that?

19 A. Yes, I do.

20 Q. And you believe that statement?

21 A. Yes, I do.

22 Q. Okay. Prior to your signing your affidavit

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1 on May 31, 2006, I think we determined, did you or
2 anyone at your firm take any steps to determine what
3 it would entail to receive the names and addresses
4 of at least some portion of Class 1?

5 A. No, I did not.

6 Q. So you didn't talk to personally --
7 (Interruption)?

8 MR. FLYNN: We're just breaking for a second.
9 Counsel for B-MS has entered.

10 Q. So I take it you did not talk to CMS to
11 determine what it would take to get the names?

12 A. I did not.

13 Q. You didn't talk to any organization to
14 determine what it would take to get names?

15 A. I was under the understanding that the data, if
16 it existed, would only be with CMS, and that based on
17 a previous case, that it would be not only difficult
18 but, perhaps, impossible to get that, and I was asked
19 to develop a notice program that utilized published
20 notice.

21 Q. So you were asked not to even consider trying
22 to attempt to determine what steps it would take to

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1 get the names and addresses?

2 A. I was not charged with getting that -- getting
3 that information.

4 Q. So you have no knowledge based on any work
5 that you did to say one way or another whether the
6 names and addresses of members of Class 1 could be
7 obtained and what it would take to obtain those names?

8 A. Not on my own.

9 Q. Was it plaintiffs' counsel who told you to
10 assume that the names and addresses could not be
11 obtained through reasonable efforts?

12 A. I was told, as I just stated, that it would
13 be difficult, if not impossible, and I should proceed
14 to put together a published notice program. I was
15 also told that if the names were to be made available,
16 that that would be part of the notice program as well.

17 Q. And it was plaintiffs' counsel who told you
18 these things?

19 A. That's correct.

20 Q. Who in particular?

21 A. Mr. Notargiacomo.

22 Q. You were at the -- you were in attendance at

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1 the June 5, 2006 conference in front of Judge Saris
2 in this case; is that right?

3 A. That's correct.

4 Q. And do you recall at that hearing Mr.
5 Notargiacomo indicating that in this case
6 plaintiffs' counsel had made no contact with CMS to
7 determine what it would take?

8 A. I heard that.

9 Q. In addition to taking no effort on your own
10 to determine whether or not it would be reasonable
11 to obtain the names from CMS, did you do any
12 research or conduct any inquiry to determine whether
13 or not the names of certain members of Class 1 could
14 be obtained through third-party payors of any kind?

15 A. No, I did not.

16 Q. You didn't talk to any third-party payors?

17 A. I don't think I would have had time, even if
18 I had a year, to talk to all the third-party payors
19 involved.

20 Q. I don't think I said "all." Did you talk to
21 any?

22 A. No, I didn't.

1 Q. Did you conduct any research into how one
2 might go about trying to develop lists of names and
3 addresses of Medicare recipients?

4 A. No, I did not.

5 Q. Did you talk to any state attorney generals
6 who represent, in their parents' patriarch capacity,
7 potential members of Class 1 as to whether or not
8 names and addresses of those potential members of
9 Class 1 could be obtained?

10 A. I did not. Had I thought about doing that,
11 I still would not have done that, because I don't
12 believe there's any way possible that you could have
13 had a complete list of the names of those
14 individuals, even through third-party payors, that
15 would be consequential enough not to have to do a
16 very thorough published notice program, and you
17 wouldn't be able to quantify how well you were
18 reaching those people by those fragmented lists.

19 Q. Do I take it by your answer that your
20 standard for whether or not you try to find the
21 actual names and addresses of members of a consumer
22 class like Class 1 is whether you can find them all?

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1 A. Well, you have issues of overinclusive and
2 underinclusive lists. Usually you will have lists
3 that are available in a form that is reasonable and
4 practical to get your hands on. I don't think -- I
5 couldn't go into a court and say to the judge that
6 the list we got from six out of 50 some-odd
7 cooperating AGs or 10 out of 1,000 or 2,000 or
8 10,000 third-party payors would be worth the effort
9 or would be adequate under the circumstances but
10 then knowing, also, that I was able to reach those
11 people through a published notice program of
12 significant weight.

13 Q. You don't have any basis in this particular
14 case to make any statements about what that effort
15 would have entailed, do you?

16 A. No, but I know it would be significant.

17 Q. But you've done nothing in this particular
18 case to support your statements as to the difficulty;
19 is that right?

20 A. Not in this particular case, but I have a
21 number of years of experience of having to look at
22 lists of published notice and how difficult it is to

1 Q. Is there any difference in approach in terms
2 of either the means of publication or the content of
3 the notice that you take into account in a litigated
4 situation when you're approaching a notice program?

5 A. Not really.

6 Q. You're familiar with the term
7 "demographics," I take it.

8 A. Yes.

9 Q. Would you agree with me that individuals in
10 the general population consume media differently
11 depending on income?

12 A. Yes.

13 Q. Depending on gender?

14 A. Yes.

15 Q. Education level?

16 A. Yes.

17 Q. What else?

18 A. Ethnicity, basically any general demographic
19 that you'd ascribe to someone.

20 Q. And you've written -- and we'll look at it
21 in a second. You've written that notice programs
22 must establish a clear demographic target or targets

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1 in order to select the appropriate media; is that
2 right?

3 A. That is correct.

4 Q. And one of the targets you've put forward in
5 this case that you're trying to reach are Medicare
6 recipients, right?

7 A. That's correct.

8 Q. And when you're dealing with a
9 pharmaceutical product and trying to reach people
10 who used a particular pharmaceutical product, it's
11 important to know who used it, where they were, over
12 what period of time, and you've written about all
13 those sorts of things in your study of effective
14 notice programs; is that right?

15 A. That is correct.

16 Q. And it's important to be specific because
17 otherwise you might miss your target audience,
18 right?

19 A. It's important to have a target audience or
20 a target that reflects your audience.

21 Q. And a target that is too broad is
22 susceptible to not selecting the right media; is

1 that right?

2 A. No.

3 Q. If you have a target that includes everybody
4 in the United States, you might select media that's
5 not specific to a subsection of that target; is that
6 right?

7 A. That's a possibility with a target the size
8 of adults 18-plus, and there -- you will always find
9 within that kind of target people who have
10 differences, but that's why we measure. We measure
11 the reach of a specific target that has within it
12 subsets of individuals and demographics, and the
13 more narrow the target, the more likely it is
14 that -- if it's a number, in this case, like the
15 Medicare Part B people, and there are a number of
16 drugs involved, if you were too specific you would
17 not have an effective notice because you'd be losing
18 the breadth.

19 But that's why we -- that's why we're
20 basically suggesting that the reach that we have
21 here is adequate for that. And you can assume this
22 as a rule of thumb in media planning, that you're --